

**BARRY FRIEDMAN**

Jacob D. Fuchsberg Professor of Law  
Affiliated Professor of Politics  
New York University School of Law  
40 Washington Square South, Room 317  
Phone: 212 998 6293  
Fax: 212 995 4030  
*barry.friedman@nyu.edu*

**PROFESSIONAL EXPERIENCE**

Jacob D. Fuchsberg Professor of Law and Affiliated Professor of Politics, New York University School of Law, New York, NY, 2003-present

Director, Policing Project at NYU Law, 2015-present

Vice Dean, New York University School of Law, New York, NY, June 2007-June 2010

Professor of Law, New York University School of Law, New York, NY, 2000-2003 (Visiting Professor of Law, Spring 1998, Academic Year 1999-2000)

Of Counsel, Wyatt, Tarrant & Combs, LLP, Lexington, Kentucky, 1996-1999

Professor of Law, Vanderbilt Law School, Nashville, Tennessee, 1991-2000 (Associate Professor 1989-1991; Assistant Professor 1986-1989)

Litigation Associate, Davis, Polk & Wardwell, Washington, D.C., 1984-1986

Adjunct Professor, Georgetown University Law Center, Washington, D.C., 1984-1986

Visiting Assistant Professor of Law, University of Alabama School of Law, Tuscaloosa, Alabama, 1983-1984

Law Clerk to the Hon. Phyllis A. Kravitch, United States Court of Appeals for the Eleventh Circuit, Savannah, Georgia, 1982-1983

**EDUCATION**

Legal: J.D., Georgetown University Law Center, Washington, D.C. 1982.  
Magna cum laude. Class rank 3/550.  
Georgetown Law Journal  
Topic Editor, 1981-82  
Staff, 1980-81  
Dean Hugh T. Fegan Award (student with highest standing in first year class)  
Dean's List, all three years  
Washington Area Alumni Association Award (graduating senior from D.C. area with highest cumulative average)

Undergraduate: A.B., University of Chicago, Chicago, Illinois 1978.  
College Honors, Departmental Honors in Political Science.  
Dean's List  
Maroon Key Society (honor society)  
Morton Murphy and Howell Murray Awards

## **SUBJECT MATTER EXPERTISE AND COURSES TAUGHT**

Administrative Law	Equal Protection Seminar
Advanced Courts Seminar	Federalism Seminar
Civil Procedure	Federal Courts & the Federal System
Constitutional Dialogues Seminar	Fourth Amendment Seminar
Constitutional Law	Law, Economics & Politics Colloquium
Constitutional Theory Colloquium	Legal Process & the Institutions of Lawmaking
Contract Law	Models of Judicial Review
Criminal Constitutional Law	The Politics of Judicial Review
Criminal Procedure	Policing, Inequality and Law Colloquium
Democratic Policing	Policing Colloquium: The Cutting Edge of Public Safety

## **FELLOWSHIPS, RESIDENCES AND GRANTS**

Visiting Fellow, Max Planck Institute for Comparative and International Law, Heidelberg, Germany (June 2015)

Scholar, NYU Graduate Research Initiative, Paris, France (Spring 2015)

Visiting Lecturer, Institut d'Etudes Politiques d'Aix-en-Provence, France, May 2012

Visiting Lecturer, Groupe d'Études et de Recherches sur la Justice Constitutionnelle, Aix-en-Provence, France, April 2011

Visiting Lecturer, Institut d'Etudes Politiques d'Aix-en-Provence, France, April 2011

Visiting Lecturer, University of Hong Kong, May 2009

Faculty, NYU@NUS, National University of Singapore, May-June 2009

Visiting Lecturer, Groupe d'Études et de Recherches sur la Justice Constitutionnelle, Aix-en-Provence, France, April-May 2007

Visiting Fellow, Groupe d'Études et de Recherches sur la Justice Constitutionnelle, Aix-en-Provence, France, September-October 2002

Vanderbilt University Research Council 1996

Visiting Scholar, Rockefeller Foundation Study and Conference Center, Bellagio, Italy, March-April 1993

Visiting Fellow, European University Institute, Fiesole, Italy, May 1993

Vanderbilt University Research Council 1991-92

Vanderbilt University Research Council 1992-93

## **AWARDS AND HONORS**

2011 Podell Distinguished Teaching Award

2010 Scribes Book Award Honorable Mention

1995 ACLU of Tennessee Clarence Darrow Award (recognizing work in defense of civil liberties)

## PUBLICATIONS

### Books and Edited Volumes

[UNWARRANTED: POLICING WITHOUT PERMISSION](#) (Farrar, Straus & Giroux 2017)

[OPEN BOOK: HOW TO SUCCEED ON EXAMS FROM THE FIRST DAY OF LAW SCHOOL](#) (Aspen, 2<sup>nd</sup> ed. 2016) (with John Goldberg)

[THE WILL OF THE PEOPLE: HOW PUBLIC OPINION HAS INFLUENCED THE SUPREME COURT AND SHAPED THE MEANING OF THE CONSTITUTION](#) (Farrar, Straus & Giroux 2009)

[JUDICIAL INDEPENDENCE AT THE CROSSROADS: AN INTERDISCIPLINARY APPROACH](#) (Sage 2002) (co-editor Stephen B. Burbank)

### Law Reviews and Peer Reviewed Journals

[Divide & Concur: Separate Opinions & Legal Change](#), 103 Cornell L. Rev. (2018) (with Thomas B. Bennett, Andrew D. Martin and Susan N. Smelcer)

[Fixing Law Reviews](#), 67 Duke L.J. (2018)

[Benefit Cost Analysis of Public Safety: Facing Methodological Challenges](#), 8 J. Benefit Cost Analysis (2017) (with Maria Ponomarenko)

[Why Do Courts Defer to Cops?](#), 130 Harv. L. Rev. F. 323 (2017)

[Letter to Supreme Court: \(Erwin Chemerinsky is Mad. Why You Should Care.\)](#) 69 Vand. L. Rev. 995 (2016)

[Secret Policing](#), 2016 U. Chi. Legal. F. 99 (2016)

[Redefining What's "Reasonable": The Protections for Policing](#), 84 Geo. Wash. L. Rev. 281 (2016) (with Cynthia Stein)

[Democratic Policing](#), 90 N.Y.U. L. Rev. 1827 (2015) (with Maria Ponomarenko).

[Foreword: Testing the Constitution](#), 90 N.Y.U.L. Rev. 1001 (2015) (with Lee Epstein and Geoffrey R. Stone)

[To "Regulate," not "To Prohibit": Limiting the Commerce Power](#), Sup. Ct. Rev. 2012 (2013) (with Genevieve Lakier).

[How to Talk About the Constitution](#), 25 Yale J. L. & Human. 1 (2013) (with Sara Solow)

[The Federal Right to an Adequate Education](#), 81 Geo. Wash. L. Rev. 92 (2013) (with Sara Solow)

[\*Maryland v. King: The Supreme Court Fails the Fourth Amendment Test\*](#), 8 N.Y.U. J.L. & Liberty 176 (2013)

[\*Taking Warrants Seriously\*](#), 106 Nw. U. L. Rev. 4 (2012) (with Oren Bar-Gill)

[\*Endogenous Jurisprudential Regimes\*](#), 20 Political Analysis 417 (2012) (with Xun Pang, Andrew D. Martin & Kevin M. Quinn)

[\*Who Controls the Content of Supreme Court Opinions?\*](#), 56 Am. J. Pol. Sci. 400 (2012) (with Cliff Carruba, Andrew Martin, and George Vanberg)

[\*A Course Unbroken: The Constitutional Legitimacy of the Dormant Commerce Clause\*](#), 97 Va. L. Rev. 1877 (2011) (with Daniel Deacon)

[\*Becoming Supreme: The Federal Foundations of Judicial Supremacy\*](#), 111 Colum. L. Rev. 1137 (2011) (with Erin Delaney)

[\*Discipline and Method: The Making of The Will of the People\*](#), 2010 Mich. St. L. Rev. 877

[\*The Wages of Stealth Overruling \(With Particular Attention to Miranda v. Arizona\)\*](#), 99 Geo. L. J., 1 (2010)

[\*The Will of the People and the Process of Constitutional Change\*](#), 78 Geo. Wash. L. Rev. 1232 (2010)

[\*Reconstructing Reconstruction: Some Problems for Originalists \(and Everyone Else, Too\)\*](#), 11 U. Pa. J. Const. L. 1201 (2009)

[\*Ducking Trouble: Congressionally Induced Selection Bias in the Supreme Court's Agenda\*](#), 71 J. Of Pols. 572 (2009) (with Anna Harvey)

[\*On the Capacity of the Roberts Court to Generate Consequential Precedent\*](#), 86 N.C. L. Rev. 1299 (2008) (with Lee Epstein and Nancy Staudt)

[\*On the Role of Ideological Homogeneity in Generating Consequential Constitutional Decisions\*](#), 10 U. Pa. J. Const. L. 361 (2008) (with Lee Epstein and Nancy Staudt)

[\*Popular Dissatisfaction with the Administration of Justice: A Retrospective \(and a Look Ahead\)\*](#), 82 Ind. L. J. 1193 (2007)

[\*Toward a Political Theory of Constitutional Default Rules\*](#), 33 Fla. ST. U. L. Rev. 825 (2006) (with John Ferejohn)

[\*Pulling Punches: Congressional Constraints on the Supreme Court's Constitutional Rulings, 1987-2000\*](#), 31 Legis. Stud. Q. 533 (2006) (with Anna Harvey)

[\*Taking Law Seriously\*](#), 4 Persp. On Pols. 261 (2006)

[\*The Politics of Judicial Review\*](#), 84 Tex. L. Rev. 257 (2005)

[\*Las posibilidades normativas del control judicial de constitucionalidad: una respuesta a Roberto Gargarella\*](#), Revista Juridica de la Universidad de Palermo (Argentina), Año 6, Número 1 (Octubre 2005), pp. 169-174

[\*Constitucionalismo Popular Mediado\*](#), Revista Juridica de la Universidad de Palermo (Argentina), Año 6, Número 1 (Octubre 2005), pp. 123-160 (Mediated Popular Constitutionalism reprinted translated as)

[\*Under the Law of Federal Jurisdiction: Allocating Cases between Federal and State Courts\*](#), 104 Colum. L. Rev. 1211 (2004)

[\*The Cycles of Constitutional Theory\*](#), 67 Law & Contemp. Probs. 149 (2004)

[\*The Importance of Being Positive: The Nature and Function of Judicial Review\*](#) (The William H. Taft Lecture in Constitutional Law), 72 U. Cin. L. Rev. 1257 (2004)

[\*Mediated Popular Constitutionalism\*](#), 101 Mich. L. Rev. 2596 (2003)

[\*The Birth of an Academic Obsession: The History of the Countermajoritarian Difficulty, Part Five\*](#), 112 Yale L. J. 153 (2002)

[\*Electing the Supreme Court\*](#), 78 Ind. L. J. 1 (2002)

[\*The History of Countermajoritarian Difficulty, Part Two: Reconstruction's Political Court\*](#), 91 Geo. L. J. 1 (2002)

[\*The History of the Countermajoritarian Difficulty, Part Three: The Lesson of Lochner\*](#), 76 N.Y.U. L. Rev. 1383 (2001)

[\*The Counter-Majoritarian Problem and the Pathology of Constitutional Scholarship\*](#), 95 Nw. U. L. Rev. 933 (2001)

[\*Shared Constitutional Interpretation\*](#), 2000 Sup. Ct. Rev. 61 (with Michael Dorf)

[\*Everyone's Doing Congressional Historiography, Where Are the Historians?\*](#) 24 Soc. Sci. Hist. 333 (2000)

[\*The History of the Countermajoritarian Difficulty, Part Four: Law's Politics\*](#), 148 U. Pa. L. Rev. 971 (2000)

[\*Would You, Could You, Change a Thing?\*](#) 16 Const. Commen. 523 (1999)

[\*Rooker-Feldman, from the Ground Up\*](#), 74 Notre Dame L. Rev. 1129 (1999) (with Jim Gaylord)

[\*The Sedimentary Constitution\*](#), 147 U. Pa. L. Rev. 1 (1998) (with Scott Smith)

[\*"Things Forgotten" in the Debate Over Judicial Independence\*](#), 14 Ga. St. U. L. Rev. 737 (1998)

[\*The History of the Countermajoritarian Difficulty, Part One: The Road to Judicial Supremacy\*](#), 73 N.Y.U. L. Rev. 333 (1998)

[\*Valuing Federalism\*](#), 82 Minn. L. Rev. 317 (1997)

[\*Neutral Principles: A Retrospective\*](#), 50 Vand. L. Rev. 503 (1997)

[\*Legislative Findings and Judicial Signals: A Positive Political Reading of United States v. Lopez\*](#), 46 Case W. Res. L. Rev. 757 (1996)

[\*Failed Enterprise: The Supreme Court's Habeas Reform\*](#), 83 Calif. L. Rev. 485 (1995)

[\*The Fragmentation of Federal Rules\*](#), 46 Mercer L. Rev. 757 (1995) (with Erwin Chemerinsky)

[\*Federalism's Future in the Global Village\*](#), 47 Vand. L. Rev. 1441 (1994)

[\*Leadership and Majoritarianism: A Response\*](#), 11 Const. Comm. 7 (1994)

[\*Pas de Deux: The Supreme Court and the Habeas Courts\*](#), 66 S. Cal. L. Rev. 2467 (1993)

[\*Dialogue and Judicial Review\*](#), 91 Mich. L. Rev. 577 (1993)

[\*Habeas and Hubris\*](#), 45 Vand. L. Rev. 797 (1992)

[\*When Rights Encounter Reality: Enforcing Federal Remedies\*](#), 65 S. Cal. L. Rev. 735 (1992)

[\*A Different Dialogue: The Supreme Court, Congress and Federal Jurisdiction\*](#), 85 Nw. U. L. Rev. 1 (1990)

[\*Federal Jurisdiction and Legal Scholarship: A \(Dialogic\) Reply\*](#), 85 Nw. U. L. Rev. 478 (1990)

[\*A Revisionist Theory of Abstention\*](#), 88 Mich. L. Rev. 530 (1989)

[\*A Tale of Two Habeas\*](#), 73 Minn. L. Rev. 247 (1988)

[\*Conditional Spending, Federalism's Trojan Horse\*](#), 1988 Sup. Ct. Rev. 85 (with T. McCoy)

[\*Note, Computer Discovery in Federal Litigation: Playing by the Rules\*](#), 69 Geo. L. J. 1465 (1981)

### Book Chapters

*Democratic Accountability and Policing*, REFORMING CRIMINAL JUSTICE (Academy for Justice 2017) (Erik Luna, ed.) (with Maria Ponomarenko)

*The Rule of Law and the Empirical Study of Rules*, MAKING LAW AND COURTS RESEARCH RELEVANT: THE NORMATIVE IMPLICATIONS OF EMPIRICAL RESEARCH (Routledge 2014) (Brandon Bartels and Chris W. Bonneau, eds.)

*Looking for Law in All the Wrong Places: Some Suggestions for Modeling Legal Decisionmaking*, WHAT'S LAW GOT TO DO WITH IT? WHAT JUDGES DO, WHY THEY DO IT, AND WHAT'S AT STAKE (Charles Geyh, ed.). (Stanford University Press, 2011) (with Andrew D. Martin)

*The Story of Ex parte Young: Once Controversial, Now Canon*, FEDERAL COURT STORIES (Foundation Press 2009) (Judith Resnik and Vicki Jackson, eds.)

*The Myths of Marbury*, ARGUING MARBURY V. MADISON (Stanford University Press 2005) (Mark Tushnet, ed.)

*History, Politics and Judicial Independence*, JUDICIAL INTEGRITY AND INDEPENDENCE (Martinus Nijhoff 2004) (Anras Sajo and Lorri Rutt Bentch, eds.)

*Reconsidering Judicial Independence*, JUDICIAL INDEPENDENCE AT THE CROSSROADS: AN INTERDISCIPLINARY APPROACH (Sage 2002) (Burbank and Friedman, eds.)

#### Book Reviews and Review Essays

*Seventy-Fifth Anniversary Retrospective: Most Influential Articles: (Review of David L. Shapiro, Jurisdiction and Discretion)*, 75 N.Y.U. L. Rev. 1553 (2000)

*The Turn to History* 72 N.Y.U. L. Rev. 928 (1997) (reviewing Laura Kalman, *The Strange Career of Legal Liberalism* (1996))

*Back to the Future: Federal Jurisdiction in The Next Century* 12 Const. Comm. 441 (1995) (reviewing Larry W. Yackle, *Reclaiming the Federal Courts* (1994))

William R. Casto's *The Supreme Court in The Early Republic: The Chief Justiceships of John Jay and Oliver Ellsworth* 5 The Law and Politics Book Review 219 (1995) (book review)

*A Little Gem* 78 Judicature 292 (1995) (reviewing Daniel John Meador and Jordana Simone Bernstein, *Appellate Courts in the United States* (1994))

*Right and Remedy*, 43 Vand. L. Rev. 593 (1990) (reviewing Larry W. Yackle, *Reform and Regret* (1989))

#### Encyclopedia Entries

*Pennzoil v. Texaco*, The Oxford Companion to American Law (2002)

*Neutral Principles*, Encyclopedia of the American Constitution, Supplement II (2000)

*Writ of Habeas Corpus*, The Constitution and Its Amendments (forthcoming)

*Conditional Spending*, Encyclopedia of the American Constitution (with T. McCoy)

#### Opinion Pieces

[\*The Coming Storm Over the Supreme Court\*](#), New York Times (October 8, 2018)

[\*The Worrisome Future of Policing Technology\*](#), New York Times (June 22, 2018)

[\*The Heritage Foundation's Terrible Timing\*](#), Slate (September 26, 2017)

[\*Pulling the Public into Police Accountability\*](#), Gotham Gazette (April 13, 2017) (with Maria Ponomarenko)

[\*We Spend \\$100 Billion on Policing. We Have No Idea What Works.\*](#), The Washington Post (March 10, 2017), in Perspective.

[\*Commentary: Democratic Policing Can Lead to More Accountability\*](#), Philadelphia Inquirer (February 19, 2017)

[How Did Justice Scalia Shape American Policing?](#), The Atlantic (August 20, 2016)

[The Problem with Modern Policing, as Seen From the Right and From the Left](#), New York Times (June 3, 2016), in Book Review

[Obamacare is Doomed! Everybody Panic!](#), Slate (November 10, 2014) (with Dahlia Lithwick)

[What's Left? \(Part 3\) Reader Suggestions on the Progressive Agenda](#), Slate (July 17, 2013) (with Dahlia Lithwick)

[What's Left? \(Part 2\) Our Progressive – and Popular – Wish List](#), Slate (July 3, 2013) (with Dahlia Lithwick)

[What's Left? Have Progressives Abandoned Every Cause Save Gay Marriage?](#), Slate (July 1, 2013) (with Dahlia Lithwick)

[The Supreme Court Fails the Fourth Amendment Test. What All the Justices Don't Understand About Police Investigations](#), Slate (June 5, 2013)

[Guns, Pot and State Rights](#), Huffington Post (May 22, 2013)

[Online Alexander Bickel Symposium: Learning About the Supreme Court](#), SCOTUSblog (August 20, 2012)

[Obamacare and the Court: Handing Health Policy Back to the People](#), Foreign Affairs (July 16, 2012)

[Was John Roberts Being Political? At the High Court, Law and Politics Come Together. It's the Politicization of the Court That Should Make Us Worried](#), Slate (July 2, 2012) (with Dahlia Lithwick)

[Why Are Americans Losing Trust in the Supreme Court?](#), The Nation (June 18, 2012)

[Justice by the Numbers: When it comes to deciding the future of Obamacare, the Supreme Court should ignore public opinion](#), Slate (April 24, 2012) (with Dahlia Lithwick)

[Privacy, Technology and Law](#), New York Times (January 29, 2012), at SR5

[Not Your Gingrich's Supreme Court: The Supreme Court rediscovers federalism just in time for 2012 election](#), Slate (December 14, 2011) (with Dahlia Lithwick)

[Watch As We Make This Law Disappear: How the Roberts Court Disguises its Conservatism](#), Slate (October 4, 2010) (with Dahlia Lithwick)

*Smooth Operator: Kagan Slips GOP Attacks on Her Way to Supreme Court Nod*, YAHOO! NEWS (June 30, 2010)

*Behind Kagan Hearing: A Fight Over 'Activist Judges'*, YAHOO! NEWS (June 28, 2010)

[A One-Track Senate](#), New York Times (March 10, 2010) at A27 (with Andrew D. Martin)

[Speeding Locomotive: Did the Roberts Court Misjudge the Public Mood on Campaign Finance Reform?](#), Slate (January 25, 2010) (with Dahlia Lithwick)



[\*Prop. 8, The Trial That Should Be Seen\*](#), LA TIMES (Jan. 15, 2010)

[\*Benched: Why the Supreme Court is Irrelevant\*](#), The New Republic (September 23, 2009)

[\*The Supreme Court Isn't as Aloof as We Think\*](#), The Boston Globe (July 26, 2009), in *Globe Ideas*

[\*Why 'Ricci' Should Frighten Democrats\*](#), The New Republic's The Plank (June 30, 2009)

[\*Justice Sotomayor's Challenge\*](#), Forbes (May 27, 2009)

[\*Federalism by Default\*](#), The American Lawyer (April, 2009)

[\*Wearing a Robe is the Least of It\*](#), Newsday (October 6, 2005)

[\*The Glib Critics of the Courts\*](#), New York Times (November 24, 2000)

*Zippering Up the Lip*, The Tennessean (May 20, 1991)

*How a Supreme Court Vote Set Back Gay Rights*, San Francisco Chronicle (January 14, 1991)

*The Spirit of Liberty Means More than Just Waving a Flag*, The Tennessean (July 16, 1990)

[\*Rights, Reform and the Chair\*](#), Chicago Tribune (May 31, 1990)

#### Miscellaneous

[\*On Balance: Bringing Benefit-Cost Analysis to Policing Practices\*](#), Society for Benefit-Cost Analysis, (February 12, 2017)

[\*How Does Legal Change Happen? Perspectives from the Academy\*](#), Brennan Center for Justice, 2015 (with Michael Waldman, Helen Hershkoff, and Kenji Yoshino)

[\*The Fourth Amendment\*](#), National Constitution Center, 2015 (with Orin Kerr)

[\*Matters of Debate: What the Fourth Amendment Fundamentally Requires\*](#), National Constitution Center 2015

[\*Just Books\*](#): Barry Friedman Brennan Center For Justice (June 2, 2010),

[\*The Constitution: Change and Interpretation\*](#), Am. Const. Soc'y. (June 2007)

[\*Dedication, Symposium: For Kim, and Her World, in a Tribute to the Work of Kim Barry: The Construction of Citizenship in an Emigration Context\*](#), 81 N.Y.U. L. Rev. 1 (2006)

[\*Editor's Introduction, Symposium: Constitutional Borrowing\*](#), 1 Int'l J. Const. L. 177 (2003)

*The Osmotic Process*, 29 Vand. Law. 18 (1999)

*Attacks on Judges: Why They Fail*, 81 Judicature 150 (1998)

*Proposals to Reduce the Federal Government's Regulatory Overreach, Restoring Balance To the American Federal System, a Report of Proceedings of the 1995 States' Federalism Summit* (1996) (conference papers)

*The Fragmentation of the Federal Rules*, 79 *Judicature* 67 (1995) (with E. Chemerinsky)

*Bellagio: A Refuge for Contemplation*, 24 *Vand. Law.* 14 (1993)

*How Free is Free Expression? The Arts and the First Amendment*, 21 *Vand. Law.* 5 (1991)

*A Newcomer's View: Yesterday's Law School of Tomorrow*, 19 *Vand. Law.* 14 (1988)

*How Cities Can Be Protected Under the U.S. Constitution*, Nat'l League Of Cities (with L. Kaden and R. Maxwell) (1986)

### Works in Progress

What Do We Mean By Public Safety (and Why Might It Matter?)

The Federal Role in Local Law Enforcement (with Rachel Harmon)

Bringing Cost Benefit Analysis to Policing (co-authored with Elizabeth Janszky)

What Information Should the Government Hold (co-authored with Ian Samuel)

Judicial Decisionmaking: A Coursebook (marrying social science literature on judging with normative and positive questions regarding law and legal institutions) (with A. Martin, M. Lemos, T. Clark and A. Larsen)

### **SELECTED ACADEMIC PRESENTATIONS**

Panelist, The Intersection of Technology and Criminal Justice, Criminal Justice at a Crossroads Symposium, November 2017, co-sponsored by The Heritage Foundation and University of California Berkeley School of Law

Speaker, Recent Books on the Constitution Seminar, Georgetown Center for the Constitution, Georgetown University Law Center, October 2017, on *Unwarranted*

Speaker, Policing the Police: A Conversation with Barry Friedman, October 2017, co-sponsored by Georgetown Federalist Society, Georgetown Center for the Constitution, National Security Law Society, Georgetown Criminal Law Association

Faculty Workshop at Seattle University, Seattle School of Law, May 2017, on *Fixing Law Reviews*

Speaker, Book Talk with Barry Friedman: Policing Without Permission, Criminal Justice Policy Program, Harvard Law School, March 2017

Panelist, discussion of *Unwarranted*, University of California Los Angeles School of Law, March 2017

Convener, Cost-Benefit Analysis of Policing Conference, NYU School of Law, February 2017

Democratic Policing, Faculty Colloquium at Max Planck Institute, Heidelberg, June 2015

Lecture, Theory and Analysis of Law Center, The Will of The People? The Supreme Court and Public Opinion, Paris West University Nanterre La Défense, May 2015

Workshop at American University, Washington College of Law, January 2015, on policing and the constitution

Workshop at Georgetown University Law Center, January 2015, on democratic authorization of policing

Workshop at Northwestern University School of Law's Law and Economics Workshop, January 2015, on concurrences

Workshop at the Constitutional Law Workshop, University of Chicago Law School, January 2015, on Two Types of Policing

Workshop at Northwestern University School of Law, October 2014, on democratic policing

Organizer and Presenter, Testing the Constitution Conference, October 2014, The University of Chicago Law School, on empirical analysis of constitutional issues

Panelist, Constitutional Interpretation and Change: A Conference on Jack Balkin's *Living Originalism*, April 2012, Yale Law School

Lecture, Inaugural Raymond Pryke Chair in First Amendment Law, Policing Without Permission, January 2012, University of California – Irvine School of Law

Panelist, Discussion of King and Hoffmann's *Habeas for the Twenty-First Century*, April 2011, Vanderbilt University Law School

Lecture, The Agenda of the Roberts Court and The Will of the People, February 2011, Duke University School of Law

Participant and panelist, Yale Statutes Conference, December 2010, Yale Law School, on Administrative Constitutionalism

Panelist, Who's Activist Now?: The Roberts' Court in History, June 2010, New York University School of Law

Panelist, symposium on THE WILL OF THE PEOPLE, April 2010, Michigan State University College of Law

Panelist, Scholarly Luncheon Series on the role of public opinion in shaping Supreme Court decision-making, March 2010, William and Mary Law School

*The Wages and Possibilities of Stealth Overruling (With Special Reference to Miranda)*, paper delivered at Washington University in St. Louis School of Law Colloquium, February 2010

Panelist, University of Pennsylvania Journal of Constitutional Law Symposium on The Judiciary and the Popular Will, University of Pennsylvania, January 2010, on THE WILL OF THE PEOPLE

Presentation of THE WILL OF THE PEOPLE at The University of Chicago, January 2010, Sponsored by the American Constitution Society

Speaker, THE WILL OF THE PEOPLE book discussion, University of Southern California, October 2009, sponsored by the Center for Law, History & Culture at the USC Gould School of Law

Participant, GW Law Review Symposium, October 2009, on Judicial Review: Historical Debate, Modern Perspectives, and Comparative Approaches

Commentator, American University Young Scholars Workshop, September 2009  
Lecture, University of Hong Kong, May 2009, on influences of public opinion on judicial Review

Paper delivered at an American Constitution Society conference on the Second Founding, at the University of Pennsylvania School of Law, November, 2008, on originalism and the interpretation of the Reconstruction amendments

Paper delivered at the Duke Law School Legal Theory Workshop, October 2008, on modeling Supreme Court deliberative decision-making

Presentation at a Yale Law School conference on the Future of Reproductive Rights, October 2008, on public opinion and Supreme Court decision-making

Participant and panelist at a conference on empirical approaches to law, Emory University School of Law, February 2008, on empirical questions in constitutional law

Paper delivered at the Legal Theory Workshop, University of Chicago School of Law, January 2008, on a positive theory of judicial review

Paper delivered at the Conference on Empirical Legal Studies, New York University School of Law, November 2007, “Does the Median Justice Control the Content of Supreme Court Decisions?”

Commentator at Work-in-Progress Workshop, American Enterprise Institute, October 2007, on book manuscript by Michael Greve

Commentator at Comparative Law Roundtable, George Washington University School of Law, April 2007

Workshop at New York University School of Law Legal History Colloquium, April 2007, on chapter of book manuscript on judicial review

Paper delivered at a symposium on Positive Approaches to Constitutional Theory, University of Pennsylvania School of Law, February 2007, on Ideological Homogeneity and Consequential Decisions of the Supreme Court

Paper delivered at the Constitutional Theory Colloquium, Northwestern University School of Law, February 2007, on the Warren Court

Speaker at the American Association of Law Schools’ Annual Meeting, Federal Courts Section, Washington, D.C., January 2007

Panelist at the American Political Science Association Annual Meeting, September 2005, on Linda Greenhouse’s “Becoming Justice Blackmun”

Workshop at Stanford Law School’s Legal Theory Workshop, May 2005, on first chapters of NEITHER FORCE NOR WILL

Participant at a Liberty Fund Conference, Chapel Hill, North Carolina, March 2005, on the political economy of constitutions and courts

Participant at a Liberty Fund Conference, Lone Mountain Ranch, October 2004, on liberty and democracy: critiques of countermajoritarianism

Organizer and participant at Constitutional Theory Conference, New York University School of Law, October 2004

*The Importance of Being Positive: The Nature and Function of Judicial Review*, The Jacob D. Fuchsberg Inaugural Chair Lecture, New York University School of Law, March 2004

*The Importance of Being Positive: The Nature and Function of Judicial Review*, The William H. Taft Lecture on Constitutional Law, University of Cincinnati School of Law, Nov. 2003

Paper delivered at a joint USC/Cal Tech conference on Modeling the Constitution, California Institute of Technology, May 2003, on Modeling Judicial Review

Paper delivered at a symposium on commemorating the 200th anniversary of *Marbury v. Madison*, University of Michigan School of Law, February 2003, on Public Opinion and Judicial Review

Speaker at Georgetown University Law Center's celebration of the 200th Anniversary of *Marbury v. Madison*, February 2003, on the Myths of *Marbury*

*The Constitution and Other Legal Systems: Are there Progressive and Conservative Versions?* paper delivered at a conference on, Duke University School of Law, December 2002, on Historicizing Constitutional Theory

Speaker at the American Association of Law Schools' Workshop on Constitutional Law, June 2002, on the Constitution Outside the Courts

Speaker at the American Association of Law Schools' Workshop on Federal Courts, May 2002, on Interdisciplinary in Federal Courts Scholarship

Participant at The American Academy of Political and Social Sciences, Book Presentation, National Press Club, Washington, DC, April 2002, on Judicial Independence

Participant at the Conference on Constitutional Courts at Washington University, St. Louis, November 2001

Workshop at the University of Michigan School of Law's Law and Economics Workshop, November 2001, on Modeling Judicial Review

Workshop at the Hoover Institute, Stanford University, June 2001, on Modeling Judicial Review

Speaker at the American Association of Law Schools' Workshop on Federal Jurisdiction, May 2001, on Interdisciplinary Approaches to Federal Jurisdiction Scholarship

Paper delivered at a Conference on Constitutional Courts sponsored by New York University School of Law's Global Law School and the Olivetti Foundation, Rome, Italy, May 2001, on the History of Judicial Supremacy in the United States

Paper delivered at a Conference on Constitutional Courts, Central European University, Budapest, Hungary, May 2001, on the Political Safeguards of Judicial Independence

Workshop at George Mason University School of Law Legal Theory Workshop, April 2001, on Modeling Judicial Review

Workshop at the New York University School of Law Colloquium on Law, Economics and Politics, April 2001, on Modeling Judicial Review

Organizer, moderator, and participant at a conference at the University of Pennsylvania School of Law, April 2001, on New Directions in Judicial Independence Research

Paper delivered at a Conference on Congress in the Shadow of the Rehnquist Court, University of Indiana School of Law (Bloomington), February 2001, on Congressional Approval of Supreme Court Decisions

Workshop at the Legal History Colloquium, New York University School of Law, October 2000, on the Birth of the Academic Obsession with the Countermajoritarian Difficulty

Participant at a Conference on the Scientific Study of Courts, Columbus, Ohio, October 2000

Paper delivered on a panel at the American Political Science Association Annual Meeting, September 2000, on the Birth of the Academic Obsession with the Countermajoritarian Difficulty

Commentary delivered on a panel at the American Political Science Association Annual Meeting, September 2000, on Judicial Review

Commentary delivered on a panel at the Law and Society Annual Meeting, Miami, Florida, May 2000, on Modeling Judicial Review

Workshop at the University of Texas School of Law, March 2000, on the Warren Court and the Countermajoritarian Difficulty

Workshop at Vanderbilt University School of Law, February 2000, on Inverse Condemnation and Federal Jurisdiction

Workshop at the Legal History Colloquium, New York University School of Law, February 2000, on The Lesson of *Lochner*

Workshop at Fordham University Law School, January 2000, on The Lesson of *Lochner*

Workshop at the Legal History Colloquium, New York University School of Law, October 1999, on the New Deal and the Court-Packing Plan

Paper delivered on a panel at the American Society of Legal History Annual Meeting, October 1999, on the Warren Court and the Countermajoritarian Difficulty

Paper delivered on a panel at the Law and Society Annual Meeting, June 1999, on Cultural Change and Judicial Review

Paper delivered on a panel at the Organization of American Historians Annual Meeting, May 1999, on Congressional Historiography

Workshop at Brooklyn Law School, January 1999, on the Lessons of *Lochner*

Panelist at the American Association of Law Schools Annual Meeting, Federal Courts Section, January 1999, on the *Rooker-Feldman* Doctrine

Workshop at University of Pennsylvania Law School, October 1998, on the New Deal and the Separation of Law and Politics

Workshop at Vanderbilt Law School, October 1998, on the New Deal and the Separation of Law and Politics

Workshop at Boston College School of Law, April 1998, on the History of the Countermajoritarian Difficulty

Paper delivered at a symposium at Georgia State University School of Law, February 1998, on the History of Attacks on Judicial Independence

Workshop at University of Southern California Law School, January 1998, on The Sedimentary Constitution

Workshop at Vanderbilt University School of Law, November 1997, on The Sedimentary Constitution

Commentary delivered at a symposium at the State University of New York, at Buffalo, October 1997, on Taxation in a Democracy

Workshop at Northwestern University School of Law, September 1997, on The Sedimentary Constitution

Workshop at DePaul University College of Law, September 1997, on The Sedimentary Constitution

Paper delivered on a panel on the American Political Science Association Annual Meeting, September 1997, on The Sedimentary Constitution

Paper at symposium at University of Minnesota School of Law, May 1997, on the Values of Federalism

Workshop at Vanderbilt University, Robert Penn Warren Center for the Humanities, April 1997, on the Role of History in Constitutional Interpretation

Workshop at Case Western Reserve University Public Policy Colloquium, April 1997, on the History of the Countermajoritarian Difficulty

Workshop at Case Western Reserve University School of Law, April 1997, on the Role of History in Constitutional Interpretation

Workshop at Vanderbilt University School of Law, March 1997, on the History of the Countermajoritarian Difficulty

Workshop at Ohio State University College of Law, November 1996, on the History of the Countermajoritarian Difficulty

Paper delivered on a panel at the American Political Science Association Annual Meeting, September 1996, on the History of the Countermajoritarian Difficulty

Paper delivered on a panel at the Law and Society Annual Meeting, July 1996, on Constitutional Law's New Paradigm

Workshop at Washington and Lee Law School, April 1996, on the History of the Countermajoritarian Difficulty

Commentator at symposium at Yale Law School, March 1996, on Constructing a New Federalism

Commentator at symposium at Case Western Reserve Law School, October 1995, on Federalism after *United States v. Lopez*

Panelist at the American Association of Law Schools Annual Meeting, Constitutional Law Section, January 1996, on the Anti-Federalist Revival

Paper delivered at Law and Society Annual Meeting, June 1995, on the History of the Countermajoritarian Difficulty

Paper delivered on a panel at the American Association of Law Schools Annual Meeting, Federal Courts Section, January 1994, on Habeas Corpus

Workshop at Emory University School of Law, February 1993, on Habeas Corpus

Commentator at Symposium at University of Georgia School of Law, October 1992, on Definition of Constitutional Rights

Paper delivered to Federalist Society of Vanderbilt Law School, April 1989, on Privacy Rights: Which Ones Should Be Deemed Fundamental?

Presentation at a Vanderbilt Law School faculty colloquium, November 1988, on Federal Habeas Corpus Jurisdiction

## **CONGRESSIONAL TESTIMONY**

Hearing before the Subcommittee on the Constitution, Federalism, and Property Rights, Committee on the Judiciary, United States Senate, on July 14, 1997, on the historic independence of federal judges

## **SELECTED OTHER PRESENTATIONS AND SPEECHES**

Panelist, Policing in America: Force, Surveillance and the Future, The Commonwealth Club, San Francisco November 2017

Keynote Presenter, Advancing Justice Conference, sponsored by the Charles Koch Institute and Charles Koch Foundation, October 2017

Co-Facilitator, Is Law and Order Out of Order? Reshaping Policing and Incarceration for the 21<sup>st</sup> Century Symposium, Society of Fellows, The Aspen Institute, July 2017 (with Ron Davis)



Speaker and Panelist, How We Police in America: A Case for Reform, The University of Washington School of Law, May 2017

Panelist, *Unwarranted: A Conversation on Policing*, New America, New York April 2017

Panelist, Policing in a New Political Era, New America, Washington, D.C. March 2017

Speaker, *Unwarranted: Policing Without Permission*, Talks at Google, New York March 2017

Panelist, Policing Color: Black, Brown, and Blue, The Provost Forum on Race, Community and the Pursuit of Justice, Duke University February 2017

Speaker, Reshaping Policing for the 21<sup>st</sup> Century, National Constitution Center, Philadelphia, PA February 2017, on book launch of *Unwarranted* and the changing role of police

Panelist, The Twenty-Second Annual Conference of the National Association for Civilian Oversight of Law Enforcement, Albuquerque, NM, September 2016, on front-end accountability

*Governing Policing*, Lecture, Hoffinger Colloquium Series, NYU Law School November 2014

Panelist, Militarization and the Changing Culture of Policing in America, Washington, DC November 2014, American Constitution Society for Law and Policy (sponsored by Congressman Hank Johnson)

*The Supreme Court and the Will of the People/ What History Suggests We Can Expect from the Roberts Court*, Lecture, Chautauqua Institute, New York August 2010

Panelist, discussion of THE WILL OF THE PEOPLE, March 2010, Co-sponsored by Georgetown Law Supreme Court Institute, Georgetown Law Federalist Society, Georgetown Law, American Constitution Society, and Alliance for Justice

Panelist, The Will of the People: The Supreme Court and the American Public, discussion of thesis from *The Will of the People*, Annenberg Center for Education and Outreach at the National Constitution Center, January 2010

Panelist, discussion of *The Will of the People*, Voices of Vision Series, California Institute of Technology, October 2009

Talk at the Habeas Lounge@CUNY, Graduate Center at City University of New York, November 2008, on the accountability of the Supreme Court

*The Once and Future Supreme Court*, lecture at Friday Night Learning Series, Temple Sinai, Summit NJ, November 2007

Appearance on ABC's 20/20, December 1, 2000, on the 2000 Presidential Election Presentation at the Second Circuit Judicial Conference, June 1998, on the history of the countermajoritarian difficulty

Presentation to the annual meeting of the Advisory Board of the State and Local Legal Center, Washington, D.C., October 1997, on recent Eleventh Amendment decisions

Presentation to the American Judicature Society Task Force on Judicial Independence, October 1997, on the history of attacks on the independence of the federal judiciary

Faculty, videoconference presented by the Federal Judicial Center, September 1996, on the Antiterrorism and Effective Death Penalty Act of 1996

Faculty, Federal Judicial Center program for Third Circuit Judges, Seaview, New Jersey, April 1996, on federalism

Faculty, Federal Judicial Center program for Fourth Circuit Judges, Williamsburg, Virginia, March 1996, on federalism

Presentation to the Advisory Board of the State and Local Legal Center, annual meeting, Washington, D.C., October 1994, on federalism and the commerce clause

Presentations to sessions of the National Institute of Municipal Law Officers, midyear meeting, spring 1994, on federalism

Presentations to sessions of the National Institute of Municipal Law Officers, annual meeting, Nashville, Tennessee, September 1993, on federalism

Presentation to the Advisory Board of the State and Local Legal Center, annual meeting, Washington, D.C., October 1993, on the Supreme Court's recent commercial speech decisions

Panelist, Fourth Circuit Judicial Conference, The Homestead, Virginia, June 1993, reviewing the Supreme Court's 1993-94 Term

Faculty, Sixth Circuit Judicial Conference, Columbus, Ohio, 1992

Facilitator at Nashville Bar Association, Continuing Legal Education, December 11, 1991, on civil justice reform

Speech at Nashville Forum, October 8, 1991, on the role of the Supreme Court in American government

Presentation to the Advisory Board of the State and Local Legal Center, annual meeting, Washington, D.C., October 10, 1991, on the Supreme Court and federalism after *Gregory v. Ashcroft*

Presentation to the Advisory Board of the State and Local Legal Center, October 1990, on originalism and majoritarianism

Presentation to the Advisory Board of the State and Local Legal Center, April 1990, on remedial power of federal judges

Presentation to the Attorney General's Office, State of Tennessee, April 1990, on remedial power of federal courts

Panelist, Leadership Nashville, Quality of Life Day, March 1990, on regulating pornography

Faculty, Taft Institute on Government, a program for secondary school teachers in Tennessee, June 1989, on the role of the American Civil Liberties Union

Presentation to the Vanderbilt Institute for Public Policy Studies, Young Leaders Series, February 1989, on the criminal justice system

*Who Needs the ACLU?*, presentation to the Oak Ridge Chapter of the Tennessee ACLU, March 1989

Presentation at a Vanderbilt Institute for Public Policy Studies seminar on Crime and Justice, November 1988, on the orderly functioning of the criminal justice system

Presentation to the Advisory Board of the State and Local Legal Center, annual meeting, Washington, D.C., on the advisability of constitutional amendment on federalism

Faculty, Airlie Conference on the Death Penalty, 1988, sponsored by the Legal Defense Fund, on advanced federal habeas corpus practice

Presentation to the Advisory Board of the State and Local Legal Center, mid-year meeting, Washington, D.C., 1988, on the subject of national and environmental legislation and federalism

Presentation to the Alumni Board of Vanderbilt Law School, Spring 1988, on state of the law school

Participant on panel discussion at the National Conference on State Legislators' annual meeting, Indianapolis, Indiana, 1987, on Supreme Court's interpretation of Tenth and Eleventh Amendments

Speech before a section meeting at the National Conference of State Legislators' annual meeting, Indianapolis, Indiana, 1987, on Congress' use of conditions attached to spending grants to regulate state and local activity

Participant on panel discussion before a plenary session of the National Association of State Auditors, Comptrollers and Treasurers' annual meeting, Hershey, Pennsylvania, 1987, on the doctrine of intergovernmental tax immunity

Participant on panel discussion before a section meeting at the National League of Cities annual meeting, San Antonio, TX, 1986, on Supreme Court federalism decisions affecting state and local government

Orientation Speech to the Vanderbilt Law School entering classes of 1990, 1991, 1992

## **EDITORSHIPS**

Editor-at-Large, I.CON, The International Journal of Constitutional Law (2005-2009)

Symposium Editor, I.CON, The International Journal of Constitutional Law (2002-2005)

## **PEER REVIEWER**

American Journal of Political Science

Journal of Law, Economics and Organizations

Journal of Politics

Law and Social Inquiry

Law and Society Review

## **OTHER PROFESSIONAL ACTIVITIES**

Steering Committee Member of the Trust Prize (The Policing Innovation and Community Trust Prize) (2016-present)

Organizer, Symposium on Policing and Accountability in the Digital Age, NYU School of Law, Fall 2016 (with the Brennan Center for Justice)

Member, American Law Institute (2015)

Reporter, American Law Institute Project: Principles of Policing (2015-present)

Organizer, Symposium on Testing the Constitution (bringing empirical research to constitutional law), University of Chicago, Fall 2014 (with L. Epstein and G. Stone)

Organizer, American Constitution Society Conference on the Second Founding, University of Pennsylvania School of Law, November 2008

Convenor, Roughly Bi-ennial Constitutional Theory Conference

Reviewer, Various Professional Journals

Member of the Board of Directors, American Judicature Society (1992-2005); Executive Committee (1993-2001); Secretary (1999-2001); Vice-President (1997-1999); Co-Chair, Center for Judicial Independence (present); Chair of Editorial Committee (1994-1995); Chair of Program Committee (1995-1998); Chair of Membership Committee (1998-1999)

Advisory Board, State and Local Legal Center of the Academy for State and Local Government (1987-2001)

Member, Citizens for Independent Courts, Task Force on the Role of the Legislature in Setting the Power and Jurisdiction of the Courts

Participant, U.S. Attorney General's Three Branch Roundtable and Working Groups on Federal Jurisdiction (1994)

Advisory Group, Civil Justice Reform Act, Middle District of Tennessee (1991-1995); Chair of Civil Case Management Committee

Member and Vice-Chair, Charter Revision Commission, Nashville-Metropolitan Davidson County (1992-1995)

Scholar's Committee, Conference of the States (1995)

Consultant, Federal Courts Study Committee (1989-1990)

Consultant, Advisory Commission on Intergovernmental Relations, Legislative Solutions to Preemption Doctrine (1991)

Consultant, National Institute of Municipal Law Officers, Committee on Federalism (1992-1996)

Consultant, National Conference of State Legislatures' Law and Justice Committee (working on federalism initiatives) (1989-1990)

Former National Board Member and state affiliate board member and president, American Civil Liberties Union (1989-1993)

## **PROFESSIONAL ORGANIZATIONS**

American Association of Law Schools, (March 1987-present); Section on Federal Courts; Chair (1994-95), Executive Committee Federal Courts Section (1993-96); Section on Constitutional Law

American Political Science Association (1995-present)

American Society of Legal History (1996-present)

American Law and Society Association (1995-present)

American Society of Constitutional Law (1997-present)

American Bar Association (1984-present)

Lawyers Association for Women (1988-1995), Chairperson of Community Relations Committee (1990-1992)

## **LAW SCHOOL AND UNIVERSITY ADMINISTRATIVE SERVICE**

### NYU

Ad Hoc Committee to Review the Lawyering Program: Member (2009-2010)

The NYU Law Forum: Convener (2009-2010)

Vice Dean (June 2007-June 2010)

Institute for Law and Society: Steering Committee (2003-2007)

Furman Academic Program: Co-Director (2002-2007; 2008-present)

Academic Careers Program: Chair (2003-2007); Co-Chair (2011-Present)

Faculty Clinical Personnel Committee: Member (Spring 2003)

Faculty Personnel Committee: Co-Chair (2001); Member (2000-2001)

Ad hoc Building Committee (2000-2001; 2001-2002)

Law Review Advisor (2001- 2003)

### Vanderbilt

Faculty Appointments Committee: Chair (1994-95); Member (1987-89; 1990-91)

Faculty Workshop Committee: Chair (1993-94; 1995-96); Member (1997-98; 1998-99)

Dean Search Committee (1995-96)

Administrator, First-year Appellate Advocacy Program (1986-89)

Library Committee (1989-90); (1994-95)

Administrative Committee (1989-90)

Judicial Clerkships Committee: Chair (1996-97); Member (1986-88; 1995-96)

Law Review Advisor (1990-present)

University United Way Committee (1993-96)

Ad Hoc Building Committee (1996-97)

University Library Committee (1996-present); Chair (1998-99)

Research Committee (1997-98)

#### **BAR ADMISSIONS**

Admitted to practice in the District of Columbia (1983), and New York (2002), Federal District Court for the Middle District of Tennessee (1993), and before the United States Supreme Court (1986), the United States District Court, Southern District of New York (2011), and the United States Court of Appeals for the Second (2015), Sixth (1990), Ninth (2007), and Eleventh Circuits (2011).